

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

CHARLES MARYATT and KATHLEEN
MARYATT, husband and wife,

Plaintiffs,

v.

AMERICAN CASUALTY COMPANY OF
READING PA; FEDERAL INSURANCE
COMPANY, a corporation; GRANITE
STATE INSURANCE COMPANY, a
corporation; PROTECTIVE NATIONAL
INSURANCE COMPANY OF OMAHA, a
corporation; WESTCHESTER FIRE
INSURANCE COMPANY, a corporation;
TRAVELERS INDEMNITY COMPANY, a
corporation,

Defendants.

No. C06-5011RBL

ORDER ON MOTIONS
TO DISMISS AND
MOTIONS TO
TRANSFER

This matter is before the Court on Motions to Dismiss filed in the form of joinders to American Casualty's Motion to Dismiss [Dkt. #7]. Defendants Granite State Insurance Company [Dkt. #38]; Westchester Fire Insurance Company [Dkt. # 23]; Travelers Indemnity Company [Dkts. #26 and 34]; and Federal Insurance Company [Dkt. #27] all join in the portion of American Casualty's Motion arguing that this court does not have subject matter jurisdiction over the litigation because there is no justiciable controversy presented in the Plaintiff's complaint. The remaining defendant, Defendant Protective

1 National, has been dismissed pursuant to a Stipulated Order of Dismissal [Dkt. #50].

2 For the reasons discussed below, and consistent with the Court's prior Order Granting American
3 Casualty's Motion to Dismiss [Dkt. #51], Defendants' Motions are GRANTED.

4 DISCUSSION

5 A. Motions to Dismiss.

6 Defendants jointly argue that this Court lacks subject matter jurisdiction over Plaintiffs' claim.
7 Specifically, they assert that Plaintiffs fail to present a justiciable controversy between themselves and the
8 insurer Defendants.¹

9 The Plaintiffs have failed to demonstrate that they are a potentially liable party for environmental
10 damages at the Washington site. Plaintiffs claim that they are operators of the Washington site; however,
11 neither of the Plaintiffs has ever been the owner of the Washington site. More importantly, Plaintiffs
12 (admittedly) have not been the subject of any administrative proceedings, lawsuits, or any request or
13 demand whatsoever that they investigate or remediate the Washington site. Plaintiffs are not and never
14 have been responsible for costs associated with environmental damage at the Washington site. Because
15 Plaintiffs have no potential liability with respect to the Washington site, there is no controversy for this
16 Court to resolve with respect to liability insurance coverage. *See Asarco, Inc. v. Dep't of Ecology*, 145
17 Wn.2d 750, 759-760, 43 P.3d 471 (the court lacks subject matter jurisdiction to adjudicate environmental
18 damages under the MTCA when Ecology has not identified plaintiff as a potentially liable person). This
19 Court therefore dismisses Plaintiffs' claims against the remaining defendants with respect to the
20 Washington site, for lack of a justiciable controversy and a corresponding lack of subject matter
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¹Defendant Granite State also argues that Plaintiffs' claim with respect to the Washington site is barred by res judicata. Like American Casualty, Granite State negotiated a settlement agreement precluding American Linen—and Plaintiffs by way of privity—from re-instituting a claim under Granite State's policy until Plaintiffs spend \$1 million in cleanup costs. Granite State argues, and Plaintiffs do not dispute, that this condition precedent was not met. This Court therefore concludes that for reasons outlined in its prior Order, Plaintiffs' claims with respect to Granite State are also barred.

1 jurisdiction.

2 **B. Motions for Change of Venue.**

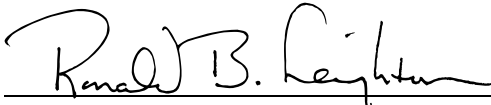
3 The Defendants jointly move under 28 U.S.C. § 1404(a) to transfer this action to the Federal
4 District Court for the Northern District of California. They argue that because the California site is the
5 only site at issue, the action should be transferred there in order to more easily and efficiently access
6 documents and witnesses associated with the site. For reasons stated in the court's prior Order, this
7 Motion is GRANTED and the remaining claims, related to the California site, are TRANSFERRED to the
8 United States District Court for the Northern District of California.
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12 The Court therefore GRANTS Defendants' Motions to Dismiss Plaintiffs' claims regarding the
13 Washington site, and GRANTS Defendants' Motions to Transfer the remaining action regarding the
14 California site to the United States District Court for the Northern District of California [Dkts. #7, 38, 23,
15 26, 27 and 34]. Additionally, Plaintiffs' pending Motion for Summary Judgment [Dkt. #44] is DENIED as
16 moot.
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18 IT IS SO ORDERED.

19 DATED this 20th of March, 2006.
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23 RONALD B. LEIGHTON
24 UNITED STATES DISTRICT JUDGE
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